

# **“External Borders of the EU – access points or concentration of human tragedy?”**

## **Reflection Paper**

**June 2008**

---

## **1. Introduction – Why this paper?**

### **A Human Tragedy**

Since many years, every summer we experience human tragedies in the Mediterranean sea: Human beings on small and often fragile or old vessels get in distress at sea, some of them loosing their life, others being rescued or intercepted at sea. People end up in reception centres on the Canary Islands, at Lampedusa to name only the ones making the headlines.

But the tragedy happens not only at sea and not only in summer (and not only in Europe). According to a press review end of 2007, at least 11,773 people have died since 1988 in attempts to reach EU territory<sup>1</sup>. Reception facilities are set up along the borders of the EU for those who didn't manage to cross them or were sent back immediately, without any perspective. In some EU neighbouring countries like Libya or Morocco significant numbers of people are waiting for an opportunity to cross the sea or at least the fence. Without any support or protection they are an easy prey for smugglers or traffickers.

### **Access to Protection and Rights**

Caritas wants to draw attention to these bottlenecks of access to the EU, where refugees and migrants arrive and find themselves in degrading situations, without a proper assessment of their case and without support or counselling. Their fundamental rights, their right to asylum or protection in general are often ignored. Due to the pressure of accommodating many people, quick fix solutions are applied by the authorities (immediate return, drop at the border of the next country without any guarantees for their safety) and/or migrants are *a priori* discredited by turning migration into a security issue in public opinion. Civil society often has only limited access to these situations or only after insisting to have the right to monitor and assist people in need.

### **Caritas encourages Action**

Caritas Europa wants to encourage and support its member organisations to take action on these issues and raise awareness about a joint concern. For Caritas it is unacceptable, that people who are in need of protection and/or looking for better opportunities in their life are not treated according to international human rights standards and partly outside the rule of law. This is even more so, as a change in public perception of this tragedy is observed. Years ago, boat people from Viet Nam were welcomed with a great wave of solidarity, whereas nowadays the new "boat people" and others in limbo at the bottlenecks of the EU are considered as "the poor invading us".

### **Address Root Causes**

Tackling the immediate needs of people stuck at borders is of crucial importance, but there are far broader implications of the phenomenon.

---

<sup>1</sup> Gabriele del Grande (2007). Fortress Europe. <http://fortresseurope.blogspot.com/2006/01/fortress-europe.html>

The root causes of forced migration and flight need to be addressed. Development work plays a significant role in this context, by facilitating opportunities for people to make their own living in the country of origin and promoting the implementation of the Millennium Development Goals<sup>2</sup>. Serious efforts for migration management are needed to provide legal channels for labour migration.

Caritas Europa would like to underline that the ultimate goal of its advocacy is to make migration an informed option.

## 2. Migration patterns

For the purpose of this paper and in accordance with the definition provided by UNHCR<sup>3</sup>, Caritas defines a migrant as a person who is living outside his or her country of birth for at least a year. This wide definition includes refugees, migrant workers, and family members arriving for purposes of family reunification as well as students. However in spite of adopting this definition to cover a broad range of situations, persons arriving in the EU in a regulated way are not of a concern in this paper. We focus on the situation of those using irregular channels outside the few possibilities offered by the legal immigration framework of EU member states, to seek for a better life or flee persecution, independently of the length of stay outside the country of origin.

In order to understand what motivates people to migrate, it is essential to consider the push and pull factors of migration. Push factors, which induce people to leave a country are negative factors like demographic evolution, lack of employment, crop failure, pollution, natural disasters or poor living conditions. Pull factors drawing people to certain areas include e.g. better paid jobs and working conditions, improved facilities, better housing or educational opportunities. A survey conducted by the Tinbergen Institute<sup>4</sup> provides further information on this issue.

Some of the so-called push factors however can be a direct or indirect consequence of policies and measures decided in e.g. agricultural or trade areas in the EU. This global interdependence should force countries and regions to ensure coherence between their diverse policy fields in order to avoid that they are counter-productive and to enhance a supporting positive effect that one policy might have on another.

People have different reasons to leave their country. Apart from refugees and asylum seekers, there are increasing numbers of people migrating for reasons which are not strictly protection-related, e.g. for employment or family reasons. In principle all these grounds are valid and it is difficult, especially at borders, to draw the line between someone seeking protection from persecution and someone moving due to economic, social and environmental reasons. As we speak of mixed migratory flows, we

---

<sup>2</sup> <http://www.un.org/millenniumgoals/>

<sup>3</sup> UNHCR (2006) "*The State of the World's Refugees*", p. 12, <http://www.unhcr.org/publ/PUBL/4444afc50.pdf>

<sup>4</sup> van Daelen, H., Groenewold, G., Schoorl, J. (2003). "Out of Africa: What drives the Pressure to emigrate?", online: <http://www.tinbergen.nl/discussionpapers/03059.pdf>, 15.05.2007

could also speak about mixed motivations. These movements are often irregular, which means that they take place without the requisite documentation and often involve human smugglers and traffickers. Irregular or undocumented migrants often have to travel in inhuman conditions and may be exposed to exploitation and abuse. They often risk their lives during the journey. In this context it should be highlighted that Caritas Europa does not consider *migrants* as being irregular or illegal but only their *ways of entry*.

In order to study how migrants arrive in Europe, it is interesting to consider some examples of migration routes: Migrants coming from Asia often use the route via Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan to Russia and then via Ukraine, Slovakia and the Czech Republic to Western European countries or even further to the United States and Canada. Furthermore, there is the Balkan route from Asian countries via Iran and Turkey and from there, via Balkan states, to Western Europe. This route is often used for smuggling of migrants, but also for smuggling illegal goods like drugs or firearms. Especially during the summer, thousands of irregular immigrants from sub-Saharan Africa arrive in Spain; many of them travelling in small, overcrowded boats and risking their lives in order to reach Europe. It should not be forgotten that people also travel in containers, many of them not reaching their destination, as they die from hunger, asphyxiation or as containers are dropped into the sea.

Over the last years, it has been observed that increased numbers of migrants are smuggled in groups, in order to make higher profits. Vessels arriving at the European coasts are thus sometimes carrying hundreds of people. The conditions on board are often inhuman and degrading, constituting a risk for life apart from the risk of drowning.

### **3. Picture of reality**

#### **3.1 Testimonies**

##### **Decision to emigrate**

*The following year, after a long illness, my father died... a few months later my little sister of 12 years, with whom I had a close relation, died of malaria. At that time I was actively looking for a job, armed with the diplomas I had. Food prices had tripled and finding a job had become difficult. (C.O., Gambia, first try)*

*After the death of my father I decided that I had to do something for my son to avoid the same fate. Around that time, people started to go to Europe and come back to the country, buy a house, a car and wearing beautiful clothes. So among many others I thought well, why not trying to go to Europe myself. I talked to my wife about the plan. During a month, I prepared myself mentally and mystically because in our culture, when you prepare for such a journey, you go to the marabout to get fortune*

amulets. It was hard for me to leave my son but on the other hand, I did it for him. (C. O., Gambia, second try)

God is just, for all the gold in the world I would not sell my daughter; she's the greatest gift God could ever give me. It's my daughter who gave me the force to go to Nouadhibou, to board a cajuco, to cross the sea, full of danger, to risk my life to get to Europe, if God allows, in the hope to find a job enabling me to improve the living conditions of my children.

The day of my departure the idea of leaving my daughter seemed intolerable to me. But I had to for her own sake. I decided to leave during the night while she was asleep to avoid seeing her tears. My wife and I woke up on a Tuesday morning at five o'clock; I took a bath and filled a back pack with two trousers, two shirts and four t-shirts. I kissed my sleeping daughter, hugged my wife goodbye and went on the road to Nouadhibou. The trip went well, this time I knew the way; it was the third time I returned to Nouadhibou. (C O, Gambia, third try)<sup>5</sup>

### **Migration Journey**

In December 2002 I left the house of my parents to go to Bamako by bus. From the capital I also travelled by bus during seven days, going through Mopti, Gao, Kidal and Tanzawaki until I got Kalil, a village at the border where I waited for two days before entering Algeria. There I stayed almost three years working very hard in different villages and cities (Bordj le Prieur, Reggane, Adrar, Ghardaia, Algires, Oran...) in order to save money and be able to pay the trip. Once I had enough money I went towards Morocco, I crossed the border by bus and went to Oujda. I paid € 500 for a ticket which was probably worth between € 8 to 10. I also paid another € 400 to bribe the police and pay the car which brought us to Rabat. The circumstances of the journey were very hard. In order not to be detected the trip is done during the night and on secondary routes. The trip took two nights. We were 14 people in one car: the conductor and two migrants on the front seats, 8 passengers in the rear seats and three more in the boot. (A. D., Mali)

From Rabat 43 migrants left for Tam-Tam following the same way which we had done already the day before (on secondary streets and turning around: from Rabat to Casablanca, then to Tanger and from there to Agadir to go in direction of Tam-Tam). This time there was a lot of police surveillance. We waited for three days in the desert hidden in couples; one was sleeping the other one watching in order not to be detected. We had one bottle of 1,5 l of water for three days and one sardine. On the third day we met in El Aaiún. Before boarding the patera they searched us again to take away all our valuables (shoes, clothes, money...). It was four o'clock in the morning; I was exhausted... three days without sleeping and eating very little. I vanished around 5 or 6. I woke up around 15.30 when some fishermen saw us close to Lanzarote. After that there was a lot of police taking our data (A. D., Mali).

---

<sup>5</sup> Testimonies collected by Caritas Spain

### **3.2 Lampedusa: Recent developments**

Lampedusa is a small island situated 120 marine miles away from Sicily, 170 from Libya and only 66 from Tunisia. It has 5-6.000 inhabitants and, during summer, they can easily rise to more than 20.000 due to tourist inflows.

It takes approximately 8-9 hours by ferry from Agrigento to reach the island; by flight from Trapani or Palermo, Lampedusa can be reached in roughly 1 hour. From the African coast, it takes 15 to 20 hours to reach the island with the small boats utilised during summer. Thus, if sea conditions are good, the journey should not be too long or dangerous; moreover, in case of need, Italian naval authorities (the Navy and the Guardia di Finanza) usually intervene well after the 12 marine miles from the territorial sea. But very often people try to arrive by any means even in dangerous sea conditions and, if boats are overcrowded, as they frequently are, tragedy is very likely to happen.

Such journeys being organised on an irregular basis, ticket "fares" amount to roughly 1-2.000\$ and give the possibility of 2-3 tries. Usually Libya is the departing point and, as it is well known, people wait for several months before the departure. In the meantime they perform irregular jobs and, in the case of women, often become victims of forced labour and sexual exploitation.

Since approximately 5 years Lampedusa has undergone a transformation: from the most extreme Italian and European outpost to first landing place for an ever growing migrant population, mostly from Maghreb and the Horn of Africa. In 2005 and 2006, 20.000 and 22.000 arrivals by boat were registered in Italy, of which an important number in Sicily. The data for 2007 are of 12.000 arrivals until the end of August. The majority of them fall within the category of labour migrants, even though in 2007 30% applied for asylum and 65% of them obtained some form of international protection. Many do not hold any documents in order to hamper their identification and, consequently, their possible forced expulsion from the Italian territory. A minority of migrants (i.e. Eritreans and Ethiopians), seeks asylum and, in this case, until early 2008 Italian authorities granted some of them a humanitarian status. A permit to stay, valid for one year and renewable, giving the beneficiaries the right to work was issued. From 2008 onwards, people in these categories would be eligible for subsidiary protection, with a permit to stay, valid for 3 years.

In Lampedusa, there was a reception centre which could hold up to 186 people in rooms of 40 for men. Women were placed in a separate wing of the building but in cohabitation with minors. The Centre was located at the back of the small civil airport and was poorly organised in terms of facilities. Another, bigger and much better organised centre for up to 336 people for men/women/children and ill people was opened in July 2007. In 2008 the centre was enlarged to host up to 850 persons in case of emergency.

Up to March 2006 the centre was a CPTA (detention and assistance centre) designed for persons with an expulsion order, who could be detained for up to 60 days. Many forced repatriations directly towards Libya or Egypt have been carried out by the previous, centre-right wing government rather informally and hastily, simply through the identification of people on the basis of their physical appearance.

Protests from Italian civil society and from the international community have put pressure on the government which had to transform Lampedusa's detention centre into a CPA (reception centre). People thus receive first aid, remain in the centre for a few days and are then sent to other centres on the main land, where their legal status is assessed (either they are asylum seekers or irregular migrants, who will consequently be expelled). Moreover, since March 2006 UNHCR, the International Organisation for Migration (IOM), Red Cross and more recently, Save the Children have set up a desk which can, also with the assistance of interpreters, listen to and give orientation to people who have just disembarked. The service is open every day and UNHCR considers it as model for other European centres.

In conclusion, there is no doubt that the status change of Lampedusa's centre has definitely improved reception conditions of migrants who, however, are still risking their lives and paying consistent amounts to get to Europe, also because of the still rather poor migration policies carried out by European governments. It is however necessary to underline that Italy has been foreseeing and planning consistent entry quotas of migrants - from 1999 to 2006 1.044.100 entries have been authorised under the quota scheme – especially if they are seen against the demographic and economic situation and the defective local welfare systems.

### ***Main issues***

- Lampedusa, a small island very near to Tunisia and Libya is a door to Europe for mixed flows (economic migrants and asylum seekers)
- Until March 2006, there was a detention centre designed for expelled people.
- Thanks to public and political pressure, it has become a reception centre and UNHCR, IOM and Red Cross have set up a desk which can listen to and give orientation to people who have just disembarked
- Italy provides entries for labour migration on the basis of quota schemes

### 3.3 Spanish borders: Ceuta and Melilla and the Canary Islands

Over the last few years the number of immigrants in Spain has increased considerably. In that context it is particularly important to underline the presence of high numbers of undocumented migrants coming from Sub-Saharan countries like Mauritania, Senegal or Cameroon. With regard to the Spanish map of migration, two important areas of transit can be observed, namely the airports and the southern and northern borders. At airports strict controls by the Spanish police take place, especially with regard to the fulfilment of the new visa requirements. In contrast, the competent authorities at the northern and southern borders have diverging views on practical implementation of the legal provisions. The areas which are of particular importance now are Canary Islands and Ceuta and Melilla. The media have been drawing an image of continued presence and uncontrolled arrivals of migrants.

The situation is highly precarious in the Spanish enclaves of Melilla and Ceuta. In autumn 2005 hundreds of African migrants tried to break through the fences surrounding Ceuta and Melilla. In doing so many migrants got hurt and seven were shot dead by the Moroccan armed forces. Moreover, the Moroccan forces arrested approximately 1.200 people and abandoned them in the Sahara, where many of them died of thirst<sup>6</sup>.

Now some regions in Spain are attracting labour intensive industrial companies in the traditional rural areas with intensive cycles of production linked to greenhouses, in particular in southern parts of Spain. The workers in general are sub-Saharan, some of them with a one or two years permit of stay. According to Spanish law, having a job is not a requirement to receive the permit to stay. This sets up a permanent "stock" of workers which is easy to move and complies with labour market needs, but not with the rights and needs of the workers and their projects.

#### 3.3.1 The Situation on Canary Islands

The Canary Islands are an archipelago of eight inhabited islands and a chain of five small islets in the Atlantic Ocean, at a distance of some 1,000 kilometres from the nearest point of peninsular Spain and some 100 kilometres from Africa. They constitute the most southern border of Europe. The islands cover a surface area of 7,446 km<sup>2</sup>, with 1,114 km of coastline and 257 km of beaches. Estimates by the Canary Islands Institute of Statistics (ISTAC) point to a population of 2,013,000, and a population density of 270 inhabitants per square kilometre, as at 31 May 2006. 222,260 were foreigners, including EU citizens; i.e. some 11.3% of

---

<sup>6</sup> Milborn (2006). *Gestürmte Festung Europa. Einwanderung zwischen Stacheldraht und Ghetto. DAS SCHWARZBUCH*. Wien etc.: Styria Verlag.

the total population. This percentage is higher than the average elsewhere in Spain (8.5%; 3,730,610 foreigners).

#### 3.3.1.1 Irregular Entries

In 2006, Spanish Government sources counted 31,678 irregular entries of migrants, on board of more than 400 boats. According to the same sources, the number of irregular entries by sea to the Canary Islands decreased to a number of about 12.500 in 2007.

#### 3.3.1.2 Reception capacities and conditions

The reception capacity in the Administration centres is limited. In general NGOs do not have easy access to these centres; only the Spanish Red Cross has a limited access in medical and emergencies cases ; the centres were occasionally overcrowded because identification procedures of immigrants are slow. The governmental accommodation structures had developed a protocol of first steps in the humanitarian assistance; but the main purpose of the centres is to facilitate repatriation as soon as possible.

55.938 immigrants were repatriated from Spain in 2007, 6% more than in 2006. The enforcement of border control (land and sea) and the new cooperation between the EU and African Countries are the main reasons for this increase. At the same time, the number of arrivals of "Cayucos and Pateras" to Canary Islands represented around 60% of all arrivals through Spanish sea borders (53% in 2006).

The number of transfers of migrants had increased from 4.200 in 2005 to 12.876 in 2006 (October). In general the reception centres were their final destination..NGOs took care of around 10.500 persons through different projects (e.g. providing legal or humanitarian assistance as well as medical care or improving language skills). The main provinces of first reception were Madrid, Murcia, Valencia and Malaga. After this first phase, people were transferred to other provinces (rural areas and smaller or bigger cities).

After this initial period of time (one month in the best case) the immigrants are released and expected to organise their living by themselves, often ending up in the street.

#### 3.3.1.3 Unaccompanied Minors

During the last two years an important phenomenon has been observed, namely the presence of growing numbers of children and young people from Morocco and on a smaller scale from sub-Saharan countries. In 2006 and in particular in 2007, significantly high numbers of unaccompanied minors were "recorded ". Around 1.000 young people (13 to 16 years old) remain in the reception centres in the Canary Islands at the beginning of 2008 and around 200 were offered places in different provinces during 2007, with very different degrees of legal and social protection.

#### 3.3.1.4 Deaths

Finally it is important to underline the tragedy of loss of lives on the journey to Europe. Some Spanish NGOs working on Human Rights projects stress that important numbers of people died in the Strait of Gibraltar and in the sea-areas of the Canaries. According to the Canary Island government's estimates, more than 590 people died trying to reach the coasts of the Canary Islands, plus a further 84 bodies found on the beaches of Mauritania on 30 August 2007, and 4 victims registered in September, totalling 678 bodies recovered (on African and European territory/coasts). However, NGOs and reports by the Gendarmerie in Mauritania and Senegal point to an even more shocking figure of between 2,000 and 3,000 lives lost in the Atlantic Ocean.

#### ***Main issues***

Spanish authorities have invested considerable resources in border management in order to counter the trend of increasing numbers of migrants trying to cross Spanish borders. Control and border monitoring measures have been established, return agreements were signed with several African countries and more people were forcefully returned to their country of origin.

These measures have not lead to the desired objective of dissuading or deterring migrants from deciding to embark on the dangerous journey to the EU through e.g. the Canary Islands. On the contrary, Caritas Spain is currently experiencing increasing effects of the "dark side of migration management", like trafficking and smuggling of persons, including children, with all risks of abuse connected to it. The human cost of migration has definitely increased.

### **3.4 The Situation at the Ukrainian Border**

As a result of the European enlargement, the western part of Ukraine has become a focus of global migration flows. Persons from the hot spots of the former Soviet Union, from South-East-Asia and Africa, but also from Iraq, Afghanistan, Pakistan and India are getting stuck there at the external border of the European Union.

Persons intercepted while trying to cross the border illegally, as well as persons deported back from Slovakia, are detained in several places throughout Zakarpattya. At the moment, detention facilities are located in Chop (with a capacity of 120 places for men, women and children), Pavshino (capacity of 250 places for men), Mukachevo (around 60 places for families, women with children), and the "police isolator" in Uzhgorod. While some migrants are being deported without delay, others are detained for months. The humanitarian situation in the detention facilities is unacceptable. The camps are overcrowded. So far, the Ukrainian government is not able to handle the situation on its own. There is discussion about which authority is competent (also financially) for these centers: the State Border Guard Service of Ukraine or the State Committee of Nationality and Religion Affairs.

The current lack of effective, fair and fast asylum procedures provokes suspicion towards asylum authorities among asylum seekers. Many migrants are being deported right after their detention at the border, notwithstanding any formal procedures.

Moreover, the lack of qualified interpreters or translators in the region is a big obstacle for any communication with asylum seekers and migrants, for assessing their asylum claims as well as their humanitarian needs. There is insufficient assistance (neither accommodation nor boarding) for asylum seekers, while their application is under consideration. There is also an insufficient assistance for voluntary repatriation.

The recently initialised readmission agreement between the European Union and Ukraine was expected to cause an increase of the numbers of asylum seekers in Ukraine. An increase was indeed noticed, though lower than expected. Nevertheless, , the humanitarian situation is likely to further deteriorate. The European Union is deporting people to a third country and therefore is responsible to ensure this country is able to cover the basic needs of migrants and asylum seekers and to guarantee their right as laid down in the European Human Rights Convention. The EU has not lived up to this obligation, yet.

### **3.5 Calais – a non existing case**

Calais is the closest city to the UK, at 35 km from Dover. It is a considerable transit point with 5.000 trucks a day on average by ferries or trains. The British paradox – member of the EU, outside the Schengen zone but party to the Dublin Convention - turns the Chunnel to a border for people. However, the “British dream” attracts many candidates for migration.

The situation in Calais is emblematic for the border control, even if it is not on an external EU border.

More and more women try to travel to the UK through the Chunnel. In general, Caritas France/Secours Catholique and other NGOs manage to find decent temporary accommodation for them in local houses. Early January 2008 however, an illegal settlement 80 km from Calais, with a majority of women, was destroyed. Most of the people moved to Calais, increasing the number to over 400. Among those were 40 women, which is much higher than the normally small group of about 10 women. With 400 people, tensions grew because there was a fear of not finding sufficient food. The seriousness of the situation increased to such an extent that Caritas France/ Secours Catholique had to ask the police to guard the food distribution premises during three days.

The Kosovo war increased the number of migrants and attempts to cross the border irregularly; the passage through Calais became more difficult and the waiting longer. With the winter approaching, humanitarian organisations unsuccessfully asked to organise an accommodation for the night. Finally, migrants threatened to occupy the building that was used the previous year. As a result, the Red Cross received the mandate- in September 1999- to set up a facility, only a night shelter, for a maximum of 300 people, in the enormous hangar abandoned by the companies that constructed the Chunnel. However, more women and children arrived to the hangar because the weather continued to improve. They could not be sent back to Kosovo, and the facility in Sangatte was kept open to prevent placement on the street.

Later on other conflicts in the world generated more refugees: Kurds, Iraqis, Afghans, Pakistanis. The increase of asylum applications in the UK led the media to indicate “Sangatte” as responsible for the influx, up to the point that the Red Cross was threatened with a boycott. A French-British agreement reinforced control: passage became even more difficult, making the temporary stay in Sangatte longer and increasing the number of people accommodated every night (records showing the distribution of 1.800 meals). It also led people to compete with smugglers for their share of the market. Sangatte ultimately became a fixation point and a “no-rights” zone.

The new Home Affairs minister of France, Mr Sarkozy, concerned about the French-British relations, decided to close the hangar within 6 months. After being interviewed by UNHCR, the non-EU citizens were regularised

as migrants in France or in the UK or were expelled. In November 2002, Sangatte was closed and the problem ceased to exist.

Since that time, the French and British authorities have been acting to deter the presence of the asylum seekers and migrants: the port areas have been put under close monitoring (camera, patrols, barbed wire...), controls have become more and more sophisticated (infrared detection of human beings), fines have increased for truck drivers, who are considered accomplices and the sleeping areas have been destroyed, walled up and consequently most of them became squalid. Moreover, camps settled in the forest have been quickly destroyed.

Before official visits, controls are widened and a growing number of undocumented migrants are sent back, placed in "*retention*" or expelled to another part of France, sometimes even being put in jail. People who cannot be expelled because of the situation in their home countries (wars, disturbances) are released under the obligation to leave the French territory. IOM offers assisted-return programmes and may advise asylum seekers in the application process. Nevertheless, the dream to reach the UK remains strong. The hope of the families, along with stories of fellow migrants and asylum-seekers who managed to cross the border, confirm their determination to join the UK.

Illegal crossing has become more and more risky. Some migrants hide right above the trucks' axles. These crossings are prepared far away from the border (on service areas) and are highly dangerous, sometimes even fatal.

Humanitarian associations were not allowed to enter the Sangatte centre and since the centre has been closed, humanitarian workers often find migrants and asylum-seekers in the streets, in the forest, in the dunes, in deserted houses or on service areas.

The humanitarian associations set up a co-operative network in order to preserve the dignity of the migrants: food supplies, health emergency, and hygiene. Some citizens of Calais host migrants and asylum seekers with special needs (women, illness) and during winter time, a parish centre is regularly open to migrants and asylum seekers. Among this associative network, Caritas France / Secours Catholique offers the possibility for migrants and asylum seekers to shower, to receive medical attention, psychological support and advice, which is provided by two professionals and on a voluntary basis. Meals distribution, during lunch time, is organized three times a week, on the area provided by the municipality.

Depending on the period and on the strength of the controls, between 100 and 450 asylum seekers and migrants, trying to cross the border illegally, are staying in Calais and some of them try to cross from other smaller harbours, like Cherbourg. Some of them have already tried to cross two or three times and have been caught in the UK, and sent back to France due to the Dublin regulation.

Different nationalities are represented in Calais among the migrants and the asylum seekers and this varies according to international crisis: Afghans, Iraqis, and Iranians, people from Eritrea, Somalia and Sudan.

Caritas France / Secours Catholique has taken action for 5 years to establish more dignified reception conditions of migrants and asylum seekers and for an objective information campaign. However Caritas France has always faced a firm governmental opposition: no new centre should be opened. Since the premises of Caritas France were too small to allow the reception of all asylum seekers, migrants and inhabitants of Calais facing social difficulties, the association bought a new site. Nevertheless, under the pressure coming specifically from the neighbourhood the planning permit has been refused,.

As for the municipality of Calais, the authorities had examined the establishment of mobile homes, outside of the city, to create a common space for showers and food supplies. The project was barely publicized when British media were already overreacting, and an official British reaction was released and addressed to the French presidency.

#### **4. International jurisdiction – questions and problems**

One of the key issues in regards to the growing externalisation of both asylum processing and migration control is the applicability of international human rights and refugee law to the actions of States carried out beyond its territory. From a legal standpoint it is a bad and imprecise metaphor to say that extraterritorial State actions effectively occur in a “legal black hole” or “human rights vacuum”. While the international refugee regime has a number of territorial underpinnings, what seems to matter in terms of applicability is not whether an asylum-seeker is present at the border or within the territory, but rather whether a person has come under the jurisdiction of a given State.<sup>7</sup> For the 1951 Refugee Convention it has similarly been convincingly argued that core provisions, such as the non-refoulement obligation enshrined in art.33, is not dependent on territorial affinity but applies wherever a State exercises jurisdiction.

The question is how jurisdiction is established when moving beyond the territorial confines of States. Within international law extraterritorial jurisdiction has been conceived of in two ways-as a property flowing from a State’s effective control over a defined territory, or as a relationship between a State’s exercise of authority or control over an individual. The latter is primarily reflected in more recent case law dealing with cases where agent States act inside another State and seems to reflect an expansive interpretation not to ‘allow a State party to perpetrate violations of the Convention (1951) on the territory of another State, which it could not perpetrate on its own territory.

---

<sup>7</sup> This is made explicit in a number of human rights treaties, e.g. the ECHR, CAT and ICCPR

To the extent that such interpretations are used as **pretext for extraterritorial migration control** and/or asylum processing it creates a worrying disparity where, under a strict reading, States can avoid incurring legal responsibilities for acts committed extraterritorially in situations where neither territorial nor personal jurisdiction can be established.

Beyond question of jurisdiction and territory as the starting point for responsibility-sharing under the Refugee Convention, it should also be noted that rights under the refugee protection regime are granted according to a principle of territorial approximation. Within international law extraterritorial jurisdiction has been conceived of in two ways—as a property flowing from a State’s effective control over a defined territory, or as a relationship between a State’s exercise of authority or control over an individual.

Refugees or asylum-seekers that are not present in a State’s territory but de facto under its jurisdiction, such as on the high seas or in the territory of a third State, are only entitled to a very basic set of rights centred around the non-refoulement obligation. The most pertinent rights under the Refugee Convention that are specifically granted without reference to being present or staying at the territory include Article 33 (non-refoulement), Article 16 (access to courts), and Art.3 (non-discrimination). Of somewhat lesser importance, Articles 13 (property), 22 (education) and 20 (rationing) also apply extraterritorially (Hathway 2005:160ff.)

This incremental approach reflects a seemingly sensible concern of the drafters not immediately to extend the full scope of rights in situations where refugees may arrive spontaneously in large numbers (Hathway 2005:157). However, at a time when States are moving both migration control and the management of asylum outside their own territorial confines, this notion of progressiveness risks being compromised, as refugees and asylum-seekers may never reach the territory of the acting State.

In this context, the very “remoteness” of many of the migration control mechanisms operated to intercept asylum-seekers becomes an impediment to the normal operation of the refugee regime. The reach of national courts, appeal mechanisms, NGOs or press do seldom extend beyond the physical territory of the State and even more unlikely to uninhabited geographical areas such as the high seas or offshore holding facilities. The concern is thus that asylum-seekers may not be able to exercise their basic rights or formalise asylum claims when intercepted by extraterritorial migration control or held at closed island detention centres, such as those in Lampedusa and Canary Islands.

#### **4.1 Rescue at sea: interaction of different international instruments in maritime incidents**

The legal framework governing rescue-at-sea and maritime interception and the treatment of asylum-seekers and refugees rests on applicable provisions of **international maritime law**, in interaction with

**international refugee law.** Aspects of **international human rights law** and the emerging regime for combating transnational crime are also relevant.

### **Maritime law**

Aiding those in peril at sea is one of the oldest of maritime obligations. Its importance is attested by numerous references in the codified system of international maritime law as set out in several conventions: the 1982 United Nations Convention on the Law of the Sea<sup>8</sup> (**UNCLOS**); the International Convention on Maritime Search and Rescue of 1979 (**SAR**); the 1974 International Convention for the Safety of Life at Sea of (**SOLAS**); and the 1958 Convention on the High Seas (to the extent that it has not been superseded by UNCLOS).

These conventions explicitly contain the **obligation to come to the assistance** of persons in distress at sea. This obligation is unaffected by status of the persons in question, their mode of travel, or the numbers involved. The legal framework also foresees different sets of responsibilities that need to be considered both independently and to the degree which they inter-relate.

Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighbouring States for this purpose.

The obligation to come to the aid of those in peril at sea is beyond doubt. There is however, a lack of clarity, in international maritime law when it comes to determining the steps that follow once a vessel has taken people on board.

The SAR definition of rescue implies disembarkation since the requirement of delivery to a place of safety cannot be considered to be met by maintaining people on board the rescuing vessel indefinitely. Neither SAR nor other international instruments elaborate, however, on the criteria for disembarkation. Faced with this gap in the law, UNHCR has consistently argued for prompt disembarkation at the next port of call.

The effectiveness of the international search and rescue regime rests on the swift and predictable action of all actors. This however, poses a particular challenge where it transpires that there are asylum-seekers and refugees among those rescued. In such instances, States have questioned

---

<sup>8</sup> UNCLOS defines the rights and obligations of governments, including flag states, in the various maritime zones under national jurisdiction and beyond areas of international jurisdiction, such as high seas. As such, some of the provisions of the Conventions are relevant to the treatment of refugees and asylum seekers at sea. According article 98 of UNCLOS "Every State shall require the master of a ship flying its flag, in so far as he can do so without serious danger to the ship, the crew or passengers;

- a) to render assistance to any person found at sea in danger of being lost,
- b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, in so far as such action may reasonably be expected of him;
- c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.

the extend of their responsibilities and have delayed, and even blocked, disembarkation, arguing that this would result in a strain on their asylum systems, encourage irregular movement and even contribute smuggling operations. These concerns needs to be fully reflected in the design of an international co- operative framework to deal with the situation of asylum-seekers rescued at sea.

## **4.2 International refugee law**

The main body of international refugee law, comprised of the 1951 Refugee Convention, its 1967 Protocol and numerous Conclusions of the Executive Committee of UNHCR (EXCOM Conclusions), is further complemented by international human rights law. State responsibility under international refugee law, and in particular the 1951 Refugee Convention, is activated once it becomes clear that there are asylum-seekers among those rescued. Consistent with the object and purpose of the 1951 Convention and its underlying regime, the responsibilities of States to ensure admission and to provide for access to asylum procedures have been elaborated upon in a number of UNHCR's EXCOM Conclusions.<sup>9</sup>

The 1951 Refugee Convention does not set out specific procedures for the determination of refugee status as such. Despite this, it is clearly understood and accepted by States that access to fair and efficient procedures are an essential element in the full and inclusive application of 1951 Convention.

International maritime law assumes that the nationality and status of the individual are of no relevance vis-à-vis the obligation to rescue. By contrast, international refugee law is premised on the understanding that a person has a well founded fear of persecution, on specific grounds, before he or she can avail of international protection. Clarification of status is therefore crucial in the refugee context to determine obligations owed to the refugee. It is clear that a ship master is not the competent authority to determine the status of those who fall under his temporary care after a rescue operation. Ensuring prompt access to fair and efficient asylum procedures is therefore a key element to ensuring the adequate protection of asylum-seekers and refugees amongst those rescued.

The principle of access to fair and efficient procedures is equally applicable in case of asylum-seekers and refugees rescued at sea. The reason motivating their flight and the circumstances of their rescue frequently results in severe trauma for the persons concerned. This provides added

---

<sup>9</sup> Whilst not exhaustive, these include: EXCOM Conclusions No 22 (1981), Part II A, para.2 states: "In all cases the fundamental principle of non-refoulement, including – non-rejection at the frontier- must be scrupulously observed."

EXCOM Conclusion No.82 (1997), para. d, reiterates: "The need to admit refugees into the territories of States, which includes no rejection at frontiers without fair and effective procedures for determining status and protection needs.

EXCOM Conclusion No.85 (1998), para. q "reiterates in this regard the need to admit refugees to the territory of States, which includes no rejection at frontiers without access to fair and effective procedures for determining status and protection needs.

impetus for prompt disembarkation followed by access to procedures to determine their status.

### **4.3 International human rights law**

International human rights law also contains standards in relation to those in distress and rescued at sea. The safe and humane treatment of all persons rescued regardless of their legal status or the circumstances in which they were rescued is of paramount importance. Basic principles such as the protection of the right to life, freedom from cruel, inhuman or degrading treatment and respect for family unity by not separating those rescued must be upheld at all times.

### **4.4 International criminal law**

Questions of international criminal law arise where the rescue operation is necessitated as a consequence of smuggling operations. People smuggling may indeed be a factor when large numbers of persons are found on poorly equipped and unseaworthy vessels, flouting the basic standards of maritime safety. Combating this crime is a matter of serious concern for States world-wide, alarmed by its scale and scope and the huge profits generated from it.

The way in which European Union Member States implement their obligations in the fight against trafficking in human beings and smuggling of migrants may also have an impact on refugees' access to territory and protection.

The relevant international framework includes:

- the 2000 Protocol against the Smuggling of Migrants by Land, Air and Sea, supplementing the UN Convention against Transnational Organised Crime;
- the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the UN Convention against Transnational Organised Crime; and
- the Council of Europe Convention on Action against Trafficking in Human Beings.

The 2000 Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational organised Crime, while not yet in force, constitutes the most comprehensive legal instruments, to date, covering smuggling of persons.

(Article 16(1) obliges States to take "all appropriate measures.... to preserve and protect the rights of persons" who have been the object of smuggling, "in particular the right to life and the right not to be subjected to torture or other cruel, inhuman, or degrading treatment, or punishment." In addition, according to Article 16 (3), States should "afford appropriate assistance to migrants whose lives and safety are endangered" by reason of being smuggled. In applying the provisions of Art.16, States are required in its paragraph 4 to take into account the special needs of women and children.)

Under the Protocol, the fact that migrants, including asylum-seekers and refugees, were smuggled does not deprive them of any rights as regards access to protection and assistance measures. In the context of rescue-at-sea, it is crucial that rights of those rescued are not unduly restricted as a result of actions designed to tackle the crime of people smuggling. Criminal liability falls squarely upon the smugglers and not on the unwitting users of their services.

With respect to the special circumstances of asylum seekers and refugees, it should be noted that the Protocol contains a general saving clause in its Article 19 to ensure compatibility with obligations under international refugee law. It is clear from the formulation of Article 19 that there is no inherent conflict between the standards set by the international law to combat crimes and those contained in international refugee law. Combating crime does not mean a diminution of the rights of asylum-seekers and refugees.

While both protocols state that the rights, obligations and responsibilities of States and individuals under the 1951 Refugee Convention and 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement shall not be affected, they do not provide any guidance for dealing with refugees who are smuggled or victims of trafficking in cases where they are intercepted before reaching a country in which they may reasonably be able to claim asylum. Similarly, in EU member State practice, there are no measures to determine if the persons being smuggled or victims of trafficking may need international protection. By contrast, both Protocols contain provisions aimed at facilitating the return respectively of smuggled migrants and victims of trafficking.

## 5. EU responses

In October 1999, the Heads of State or Government of the EU member states at the **Tampere** Summit decided that a common EU asylum and migration policy should be implemented. This common EU policy includes four elements:

1. A Common European Asylum System<sup>10</sup>
2. Management of migration flows
3. Partnership with Countries of Origin
4. Fair treatment of third country nationals

For the purpose of this paper we will focus on the first 2 elements.

### 5.1. A Common European Asylum System (CEAS)

In line with the decisions of Tampere, four main legal instruments on asylum have been introduced. The **Dublin Regulation** clarifies which member state is responsible for assessing an application for asylum and it

---

<sup>10</sup> European Commission (2006), online : [http://ec.europa.eu/justice\\_home/fsj/asylum/fsj\\_asylum\\_intro\\_en.htm](http://ec.europa.eu/justice_home/fsj/asylum/fsj_asylum_intro_en.htm), 21.06.2007

is thus supposed to prevent multiple applications. The **Reception Conditions Directive** sets minimum standards for the reception of asylum-seekers, which e.g. includes standards for housing, education and health. The **Asylum Procedures Directive** establishes minimum standards on procedures in member states for granting and withdrawing refugee status. The **Qualification Directive** determines criteria for qualifying either for refugee or subsidiary protection status and defines the respective rights. This directive is important as it establishes a harmonised regime for subsidiary protection in the EU. This applies to persons who are not considered as refugees under the Geneva Convention but who are nevertheless in need of international protection, e.g. because they are victims of generalised violence or civil war.

The above mentioned measures are now (being) transposed into national law of the EU member states, and it is the European Commission's task to supervise this process of transposition and to ensure that member states interpret and implement the measures in a converging way.

A number of concepts applied within the CEAS raise serious concern.

### **First country of asylum**

The Dublin Regulation stipulates that asylum seekers should apply for asylum in the EU member state through which they irregularly enter the European Union.<sup>11</sup>

The Dublin II Regulation has serious repercussions on a considerable number of asylum seekers and their applications. Strict compliance with the reception conditions directive ought to be ensured also for Dublin referrals, detention ought to be avoided and a fair procedure guaranteed. Caritas Europa is not at all convinced that the Dublin II mechanism provides for efficient and effective procedures.

In particular, asylum seekers detained under the application of the "Dublin II Regulation"<sup>9</sup> should not be detained for extended periods of time as it happens in many EU Member States. In their cases, alternatives to detention should be particularly encouraged if not prescribed.

In a situation where a national asylum system temporarily cannot cope with all the applications, assistance could be provided through mobile teams and expertise for high quality and fast determination with noted safeguards for fairness.

Our organisations are increasingly called upon to assist with complicated Dublin referrals, medical needs, unreasonable detention etc. While we agree that Member States should not escape their responsibility for asylum determination, we would still advocate that an asylum claim is assessed where it is lodged. Such a system will be less time consuming

---

<sup>11</sup> EC Regulation (2003)343 of 18.02.03, article 10, 1 : 1. „Where it is established, on the basis of proof or circumstantial evidence as described in the two lists mentioned in Article 18(3), including the data referred to in Chapter III of Regulation (EC) No 2725/2000, that an asylum seeker has irregularly crossed the border into a Member State by land, sea or air having come from a third country, the Member State thus entered shall be responsible for examining the application for asylum. This responsibility shall cease 12 months after the date on which the irregular border crossing took place.“

and more effective than organising the transfers between countries. In addition financial compensation might be offered if countries opted for assessing a claim even if another was responsible.

### **Fast track procedures at external borders**

Many of the provisions adopted at EU level, e.g. the concepts of safe country of origin, safe third country or internal protection limit access to an asylum procedure containing all legal safeguards. This creates the possibility for so-called fast-track or accelerated procedures. These provisions lack the safeguards needed to ensure that asylum seekers shall not be sent back to a country where they may face persecution and thus may endanger the fundamental principle of “non-refoulement”. All provisions allowing EU Member States the discretion to limit access to a fair and efficient asylum determination procedure should be abolished

It is important that refugees receive certainty about their situation as soon as possible after arrival. However, the consequences of accelerated procedures may not result in a downgrading of safeguards and should therefore be harmonised in accordance with the 1951 Geneva Refugee Convention. Derogations from basic procedural standards in existing EC legal instruments e.g. for procedures at borders or in transit zones should be deleted.

The idea of accelerated and border procedures and inadmissible applications should be revised as not in all the cases mentioned in these provisions there is an objective reason why asylum applicants should be treated differently from others.

## **5.2. Management of Migration Flows**

During the last years, control measures at the external borders of the EU have been tightened and the EU has invested millions of Euros in its measures of border control, e.g. for strengthening maritime surveillance or for the development and application of biometric and fingerprinting equipment. These measures considerably hinder refugees from exercising their right to seek asylum in Europe.

### **Carriers' liability and sanctions**

EU Member States agreed to introduce in their domestic legislation provisions ensuring that the carrier which has brought a person who is refused entry into the territory of one of the EU member states returns this person without delay. The obligation is supposed to apply to any sort of carrier (air, land, sea) and to the return towards a non-Schengen state. Though the instrument is partly designed to combat smuggling and trafficking of migrants and refugees, it might have an adverse effect. Airline companies e.g. apply a stricter control of identity papers upon boarding and sometimes refuse access to the aircraft to passengers whose identity papers cannot be considered as genuine above all doubt. Refugees are among the first victims of such measures. If the carrier's

sanctions are not reconsidered, refugees will be forced more than ever to make use of the services of smugglers or they will be the prey of traffickers.

### **The EU border Agency Frontex**

The EU border agency Frontex was founded in 2004 as a specialised and independent body for the coordination of operational cooperation between EU member states in the field of border protection. Frontex is supposed to assist member states in circumstances requiring increased technical and operational assistance at external borders. The agency can thus provide immediate assistance to member states which are confronted with a large influx of migrants. Rapid Border Intervention Teams (RABITs) have been created and are supposed to provide support to member states in exceptional and urgent situations. They are not intended to offer long-term assistance. Moreover, Frontex carries out risk analyses and assists member states in training of border guards, which includes the establishment of common training standards<sup>12</sup>.

In the case of an operation on high seas coordinated by the Frontex agency the individual member states still remain fully bound by their individual obligation to respect the principle of non-refoulement, as defined by the Geneva Convention relating to the status of refugees of 28 July 1951 and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment vis-à-vis all people under its jurisdiction.

### **The practice of detention**

The case studies considering the situation in Lampedusa, Spain and Ukraine already shed light on conditions of reception and detention of migrants in receiving countries, especially at borders. The EU Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers defines "detention" as the "confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement". National governments argued that detention was needed in order to facilitate processing of asylum claims as well as forced returns. It has thus become a current practice that people are detained at borders, often under bad conditions.

People in detention suffer from a deprivation of their fundamental rights, they often do not have access to legal services, are generally kept in quasi-prisons or in prisons together with persons charged of or convicted for crimes, may sometimes not receive visits and are in some cases separated from their family. As a result of being detained they suffer from "criminalisation". In a legal sense, detention is only an administrative measure and not a measure of the penal system, but its application often

---

<sup>12</sup> Frontex (2007), online: <http://www.frontex.europa.eu/>, 19.06.2007

has characteristics of criminal incarceration, and can lead to significant physical and mental health problems for the detainee<sup>13</sup>.

## **6. Advocacy messages**

### **6.1. Respect for Human rights - Monitoring and Transparency**

As the cases have shown, migrants stuck at borders or trying to cross borders irregularly are at high risk of being exploited, ill – treated and their human rights being violated. Degrading conditions in reception facilities, but also shanty towns near the border contribute to their criminalisation, although their motivation – a legitimate one – is to seek better living conditions. The assistance provided by public authorities and by EU-bodies is not transparent and open.

NGO's (and other bodies of civil society) should have access to the facilities or to investigations made among newly arrived migrants in order to monitor the compliance with human rights, provide practical solutions and develop options with the concerned persons, e.g. for their return. To this end NGO's should have access to funding and resources. Following a multidisciplinary approach, it is recommended to set up round tables with relevant stakeholders, to have a strong say and to cover different needs of people.

### **6.2 Address mixed migratory flows**

Caritas calls upon countries of origin, of transit and of destination to cooperate in addressing the so-called "mixed" migratory flows. A crucial element is the inclusion of protection sensitivity in the border and entry control systems. UNHCR in its 10-Point Plan of Action recommends "*In this respect, border guards and immigration officials would benefit from training and clear instructions on how to respond to asylum applications and how to handle the needs of separated children, victims of trafficking and other groups with specific needs.*"<sup>14</sup>

In order to guarantee protection sensitivity, Caritas recommends the following efforts:

#### **6.2.1 Access to appropriate services and information**

Migrants and refugees should have full and free access to appropriate services in respect of their human dignity. This should be complemented with information – in transit situation and upon arrival at EU borders – on the purpose of refugee protection and subsidiary protection and on opportunities for legal immigration or support for voluntary return. The global network of Caritas invests resources in these efforts and is willing to continue this in cooperation with UNHCR and other stakeholders.

#### **6.2.2 International protection**

---

<sup>13</sup> Jesuit Refugee Service Europe (2007), online: <http://detention-in-europe.org/>, 15.05.2007

<sup>14</sup> UNHCR, Refugee Protection and Mixed Migration: A 10-Point Plan of Action, 2007, p. 3

Ill informed decisions on asylum applications have grave consequences for refugees whose application is rejected. Caritas advocates for:

- The abolition of “fast-track” or “accelerated” asylum procedures if accordance with Geneva Refugee convention not safeguarded, in order to limit this risk to a minimum. Derogations from basic procedural standards e.g. for procedures at borders or in transit zones should be eliminated.
- Abandoning the concept of “safe third countries” and “safe countries of origin”  
The concept of “**safe third countries**” and “safe countries of origin” needs urgent revision as applicants do not have the opportunity to challenge the presumptions underlying the concept.
- The development and implementation of Protected Entry Procedures (PEP). PEP provide for solutions to safe and secure access to territory and asylum procedures for certain categories of refugees.
- **Interviews** with asylum seekers should be conducted by competent and trained staff according to UNHCR guidelines.
- Conducting high quality training for border guards  
**High quality training of border guards** is an important element. In addition support needs to be provided to border guards at all times to be able to call on asylum experts day and night and 7 days a week. Full, direct and unlimited access to all border areas needs to be granted to UNHCR.  
Regular joint **training and exchange programmes** between persons in charge of the determination procedure as well as representatives of NGOs and legal counsellors of diverse EU countries would be useful to develop common standards as well as an equal implementation and practice, which should be monitored independently. Civil society organisations should also be invited to contribute when it comes to setting up training programmes for all the professionals involved at national and EU levels. We consider it appropriate to gather best-practice examples to identify areas of improvement.
- During the examination of the application asylum seekers should have access to **reception conditions** respecting their human dignity and individuals’ particular needs.
- **Detention** during this phase is not an option.
- An independent **judicial review** of negative decisions must always be possible and must have a suspensive effect in order to protect asylum seekers against refoulement.

### 6.2.3 Return in dignity

Only safe and dignified return procedures for irregular migrants and rejected asylum seekers can produce a constructive collaboration (e.g. for identification) from people who have invested money and risked their lives in order to reach European borders. Voluntary return should be promoted, not only in words but in particular by providing adequate resources to guarantee sustainable reintegration of returnees in the country of origin.

### 6.3 Long term policies (legal channels for labour migration, addressing root causes)

Caritas advocates for a long term vision and strategy to tackle the challenges related to cross-border migration. They will most likely not have visible results in the short term, but will definitely be more effective in the long run. Efforts to increase resources and impact of development aid need to be improved substantially. Organising safe channels for legal migration definitely has its place in such long term policies. Caritas therefore recommends to:

- Develop and expand channels for legal labour migration to the EU

There is an urgent need to establish **channels for legal labour migration**, based on the reality of EU labour markets and on criteria, accommodating the needs of countries of origin and destination while at the same time protecting the rights of migrant workers and all members of their family. Counselling and protection should be provided along the transit routes, in order to monitor the situation and prevent human rights violations.

- Negotiate **workers' mobility agreements** between countries  
Workers' mobility agreements could be an instrument to ensure workers' rights of migrants once they enter the EU labour market. This should include the right to join a trade union.

- Expand **resettlement projects**

Caritas had hoped for the speedier development of an EU **resettlement** scheme in the past years. With a minority of EU Member States currently engaged in resettlement on a regular basis, there is still limited support in the Council, however, this year at least 3, perhaps even 6 or 7 countries may join in resettlement activities.

In addition to providing financial support for resettlement activities as foreseen in the European Refugee Fund as of 2008, the European Commission could establish a **tripartite expert group** of member states, UNHCR and NGOs on resettlement, drawing on the experience of resettlement in the current resettlement countries. The task for the group could be to develop possibilities for shared operations to make resettlement operations more cost effective.

Brussels, June 2008